United Nations A/AC.254/4/Add.2/Rev.6

General Assembly

Distr.: General
18 December 2000

Original: English

Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime
Twelfth session
Vienna, 26 February-2 March 2001

Revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime[1, 2]

[1] The present revised text reflects the result of the negotiations at the first, third, fifth, seventh, eighth and eleventh sessions of the Ad Hoc Committee. At its eleventh session, held in Vienna from 2 to 28 October 2000, the Ad Hoc Committee undertook a final review of the draft Protocol. The review was not completed during the session, but many provisions were finalized. In the present document, the footnotes indicate which provisions have not been finalized.

The articles finalized by the Committee were referred to the consistency group, which proposed technical or editorial changes to ensure consistency between the provisions of the draft Protocol, with the United Nations Convention against Transnational Organized Crime and with the other protocols supplementing the Convention. Those changes were subsequently approved by the Ad Hoc Committee. Two provisions were finalized by the Ad Hoc Committee but were not reviewed by the consistency group: article 2 (order of definitions) and article 5, paragraph 2 (general review). The complete text of the draft Protocol, once finalized, will be subject to a further review by the consistency group in order to make the language internally consistent and consistent with the Convention and the other protocols, as well as to determine the final order in which the articles will appear. In the present text, the provisions that have been finalized are accompanied by draft interpretative notes where these were requested by the Ad Hoc Committee for inclusion in the *travaux préparatoires*. Paragraphs and subparagraphs have been renumbered where feasible. Articles will not be renumbered until the entire Protocol has been finalized and the order of articles has been established.

[2] At the end of the eleventh session, several issues remained under review in articles 2, subparagraph (b) (ii), 3, 4, 5, paragraph 1 (c), and 9. The Chairman of the Ad Hoc Committee formulated a comprehensive proposal to resolve the outstanding issues. His proposals are contained in the annex to the present document and elements that affect each of these articles are described in footnotes to the text of the draft Protocol.

V.00-60117 (E)

Preamble[3]

The States Parties to the present Protocol,

Option 1

(a) *Bearing in mind* that freedom from the fear of crime is fundamental to international cooperation and to the sustainable development of States and that international illicit trafficking in and criminal misuse of firearms have a harmful effect on the security of each State and endanger the well-being of peoples and their social and economic development,

Option 2[4]

(a) *Aware* of the urgent need to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, owing to the harmful effects of those activities on the security of each State and the region as a whole, endangering the well-being of peoples, their social and economic development and their right to live in peace,

Option 1

(b) *Concerned* by the [increase],[5] at the international level, in the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and by the serious problems resulting therefrom,

Option 2[6]

(b) *Concerned* that a sizeable portion of all transfers of firearms and ammunition is illicit, having destabilizing effects closely linked to other transnational criminal activities, the high levels of crime and violence in many cities and communities and the incidence of inter-state conflict, and that the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition constitute serious obstacles to the culture of peace and to meaningful development cooperation,

Option 1

(c) *Reaffirming* that States Parties should give high priority to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition because of the links of such activities with drug trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,

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[3] The preamble was not discussed at the eleventh session of the Ad Hoc Committee.

[4] Alternative proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

[5] The delegation of the United Kingdom of Great Britain and Northern Ireland proposed replacing the word "increase" with the word "occurrence" or the words "indications of an increase" (A/AC.254/5/Add.1 and Corr.1). The delegation of Sweden proposed that evidence of the "increase" be quoted or at least mentioned (A/AC.254/5/Add.5).

[6] Alternative proposed by the delegation of Colombia.

Option 2[7]

(c) *Reaffirming* that States Parties should give high priority to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and that there is an urgent need for all States, especially those States which produce, export and import arms, to take measures to achieve those goals and to continue to develop common approaches to solving those problems,

Option 1

(d) *Considering* the urgent need for all States, especially States that produce, export and import arms, to take the necessary measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition,

Option 2[8]

(d) *Considering* that immediate action should focus on preventing the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, by exercising tighter control over their legal transfer, on strengthening pertinent laws and regulations, strictly enforcing laws and regulations concerning their use and civilian possession, and on increasing the capacity to combat their illicit possession and transfer, by improving mechanisms for the control of firearms, their parts and components and ammunition at their manufacture, distribution, transfer and transit points, as well as by enhancing accountability, transparency and the exchange of information at the national, regional and global levels,

(e) *Convinced* that combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition requires international cooperation, the exchange of information and other appropriate measures at the national, regional and global levels,

Option 1

[(e) *bis Stressing* the need, during a peace process and in a post-conflict situation, to maintain effective control of firearms, their parts and components and ammunition in order to prevent them from entering the illicit market,][9]

(f) *Recognizing* the importance of strengthening existing international law enforcement support mechanisms, such as the database established by the International Criminal Police Organization, the Interpol Weapons and Explosives Tracking System, [and the database established by the Customs Cooperation Council (known as the World Customs Organization), the Central Information System,][10] to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition,

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[7] Alternative proposed by the delegation of Colombia.

[8] Alternative proposed by the delegation of Colombia.

[9] Addition proposed by the delegation of South Africa (A/AC.254/5/Add.5).

[10] Addition proposed by the Customs Cooperation Council, known as the World Customs Organization (A/AC.254/CRP.4).

Option 2[11]

[(f) *bis Convinced* that combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition requires international cooperation and the strengthening of existing international law enforcement support mechanisms such as the database established by the International Criminal Police Organization, the Interpol Weapons and Explosives Tracking System, in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition,]

(g) *Stressing* that the promotion of [harmonized import and export][12] [and in-transit][13] controls over the licit international movement of firearms, their parts and components and ammunition [, in addition to a system of procedures for applying them,][14] is essential to the prevention of illicit [international][15] trafficking in firearms, their parts and components and ammunition,

[(g) *bis Stressing also* the need, during a peace process and in a post-conflict situation, to maintain effective control of firearms, their parts and components and ammunition in order to prevent them from entering the illicit market,

(g) *ter Mindful* of the pertinent resolutions of the General Assembly on measures to eradicate the illicit transfer of conventional weapons and on the need for all States to guarantee their security,][16]

Option 1

(h) *Recognizing* that States have developed different cultural and historical uses for firearms and that the purpose of enhancing international cooperation to eradicate illicit transnational trafficking in firearms is not to discourage or diminish lawful leisure or recreational activities such as travel or tourism for sport shooting, hunting and other forms of lawful ownership and use of firearms that are recognized by States Parties,

Option 2[17]

(h) *Recognizing* that some States have developed different cultural and historical uses for firearms, including leisure or recreational activities such as travel or tourism for sport shooting, hunting and other forms of lawful ownership and use that are recognized by such States,

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[11] Alternative to preambular paragraphs (e) and (f) proposed by the delegation of Colombia.

[12] The delegation of Pakistan proposed replacing this phrase with the words "to promote cooperation in matters relating to import and export". The delegations of Sweden and the United States of America expressed their opposition to the proposal and preferred to keep the original phrase.

[13] Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

[14] The delegation of Mexico proposed deletion of this phrase (A/AC.254/5/Add.1 and Corr.1). The delegation of Colombia proposed to keep the phrase but to replace the word "applying" with the word "enforcing".

[15] Deletion proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

[16] Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

[17] Alternative proposed by the delegation of Colombia.

Option 1

(i) *Recalling* that States Parties to the present Protocol have their own domestic laws and regulations on firearms, their parts and components and ammunition, and recognizing that this Protocol does not commit States Parties to enacting legislation or regulations pertaining to firearms ownership, possession or trade of a wholly domestic nature and that the States Parties will apply those laws and regulations in a manner consistent with this Protocol,

Option 2[18]

(i) *Recognizing also* that States Parties have their respective domestic laws and regulations pertaining to firearms ownership, possession or trade of a wholly domestic character and that States Parties will apply their respective laws and regulations in a manner consistent with this Protocol,

[(i) *bis Reaffirming* the principles of sovereignty, non-intervention and the juridical equality of States,][19]

Have agreed as follows:

[*Article O*

The provisions of this Protocol shall not be construed or applied either directly or indirectly to undermine the inalienable right to self-determination of peoples struggling against colonial or other forms of alien domination and foreign occupation, a right that is enshrined in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.][20, 21]

Article 1
Relation with the United Nations Convention against Transnational Organized Crime[22]

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol, unless otherwise provided herein.

[18] Alternative proposed by the delegation of Colombia.

[19] Addition proposed by the delegations of Mexico (A/AC.254/5/Add.1 and Corr.1) and Colombia.

[20] General Assembly resolution 2625 (XXV), annex.

[21] Addition proposed by the delegation of Pakistan. At the eleventh session of the Ad Hoc Committee, many delegations recognized the importance of the issues reflected in the proposal, but were of the view that those issues should not be dealt with in the Protocol. The Vice-Chairman proposed that the text of article O be moved to the preamble and requested delegations that supported its retention to develop text for the preamble based on the present language.

[22] At the eleventh session of the Ad Hoc Committee, article 1 was finalized, with the following note to be inserted in the *travaux préparatoires*:

"This paragraph was adopted on the understanding that the words 'mutatis mutandis' meant 'with such modifications as circumstances require' or 'with the necessary modifications'. Provisions of the Convention that are applied to the Protocol under this article would consequently be modified or interpreted so as to have the same essential meaning or effect in the Protocol as in the Convention."

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2
Use of terms[23]

For the purposes of this Protocol:

(a) "Ammunition" shall mean the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm, provided that those components are themselves subject to authorization in the respective State Party;

(b) "Firearm" shall mean:[24]

(i) Any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899; [and

(ii) Any [other weapon or destructive device such as][25] an explosive bomb, incendiary bomb or gas bomb, grenade, rocket, rocket launcher, missile, missile system or mine];[26]

(c) "Illicit manufacturing" shall mean the manufacturing or assembly of firearms, their parts and components or ammunition:

(i) From parts and components illicitly trafficked;

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[23] At the eleventh session of the Ad Hoc Committee, article 2 was finalized, with the exception of subparagraphs (b) (ii), (c) (iii) and (d).

[24] At the eleventh session of the Ad Hoc Committee, subparagraph (b) (i) was finalized, with the following note to be included in the *travaux préparatoires*:

"The word 'portable' in subparagraph (b) (i) was included on the understanding that the intended meaning was to limit the definition of 'firearm' to firearms that could be moved or carried by one person without mechanical or other assistance."

[25] Some of the delegations that supported the inclusion of subparagraph (b) (ii) of this article were of the view that the phrase "Any other weapon or destructive device" was too broad. The delegation of the United States, supported by several other delegations, proposed that it be deleted, leaving only the list. The delegation of Mexico proposed that it be placed in square brackets.

[26] At the seventh session of the Ad Hoc Committee, the Chairman asked delegations to examine three major options for determining whether the Protocol would deal with destructive devices or not: (a) to delete all references to destructive devices; (b) to retain the definition and all references in the text; and (c) to adopt the compromise proposed by the delegation of Norway, in which the items would not be defined in article 2 but would still be criminalized by a provision in article 5. At the eleventh session, an informal working group established to consider articles 2 and 5 of the draft Protocol recommended the deletion of subparagraph (b) (ii) and the adoption of a modification of the Norwegian proposal for article 5, paragraph 1 (d), that would require States Parties to criminalize importing, exporting or manufacturing portable destructive devices without a licence or authorization (A/AC.254/L.268). The group also proposed that the definition of the term "destructive devices" be left to domestic law, with a note to be included in the *travaux préparatoires* describing such devices. The delegation of the Islamic Republic of Iran proposed to delete all references to destructive devices, while encouraging States Parties to criminalize illicit trafficking in such devices or to apply other provisions of the Protocol to them using other agreements between interested States (A/AC.254/L.273). On the final day of the eleventh session, the Chairman proposed a number of changes to address all of the major issues still unresolved (see footnote 2 and annex). His proposals included the deletion from the draft Protocol of all references to destructive devices.

(ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place; or

(iii) Without marking the firearms at the time of manufacture, in accordance with article 9 of this Protocol;

Licensing or authorization of the manufacture of parts and components shall be in accordance with domestic law;

(d) "Illicit trafficking": the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol or if the firearms are not marked in accordance with article 9 of this Protocol;[27]

(e) "Parts and components" shall mean any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm;

[*Former paragraph (f) was deleted.*]

(f) "Tracing" shall mean the systematic tracking of firearms and, where possible, their parts and components and ammunition from manufacturer to purchaser for the purpose of assisting the competent authorities of States Parties in detecting, investigating and analysing illicit manufacturing and illicit trafficking.

Article 3
Purpose[28]

The purpose of this Protocol is to promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

[27] At the eleventh session of the Ad Hoc Committee, there was agreement on the wording of this provision. It was decided to reserve a final decision on the words "or if the firearms are not marked in accordance with article 9 of this Protocol", however, until the exact marking requirements of article 9 had been finalized.

[28] At the eleventh session of the Ad Hoc Committee, there was general agreement that the text should be reformulated as proposed by the delegation of Mexico, for consistency with the other protocols:

"The purpose of this Protocol is to promote cooperation among States Parties to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition."

Two delegations reiterated their position that the language of this article should limit the purpose to the prevention, combating and eradication of illicit trafficking that was linked in some way to transnational organized crime unless that linkage was established in article 4 (Scope) instead. As a result, final approval of the amended provision was deferred pending the finalization of article 4.

Article 4
Scope[29]

This Protocol applies to [all classes of commercially traded and manufactured][30] firearms, their parts and components and ammunition, but not to state-to-state transactions or transfers [for purposes of national security,][31] [or to firearms manufactured exclusively to equip a State Party's own army or security forces].[32]

[*Article 4 bis was deleted.*]

[29] This text is based on a proposal of the delegation of Japan made at the informal consultations held during the eighth session of the Ad Hoc Committee (see A/AC.254/5/Add.22), with the words "or to firearms manufactured exclusively to equip a State Party's own army or security forces" from the proposal of China (see A/AC.254/5/Add.22) incorporated. At the eleventh session of the Ad Hoc Committee, an informal working group recommended replacing the text with the following paragraphs (A/AC.254/L.267):

"1. This Protocol shall apply, except as otherwise stated herein, to the prevention of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition; and to the investigation and prosecution of offences established in article 5 of this Protocol where those offences are transnational in nature and involve an organized criminal group.

"2. This Protocol shall not apply to state-to-state transactions or to state transfers for purposes of national security, consistent with the Charter of the United Nations."

The working group also proposed to include a note in the *travaux préparatoires* to the effect that the words "state-to-state transactions" referred only to transactions by States in a sovereign capacity. There was general support for the proposed paragraph 1, but further discussion of the scope of the exclusion set forth in paragraph 2. China, Egypt and Pakistan reserved their positions on the deletion of the words "or to firearms manufactured exclusively to equip a State Party's own army or security forces" pending finalization of article 9 and a further proposal made by Egypt and Saudi Arabia (A/AC.254/L.270 and Add.1), subsequently supported by China and Pakistan, did not resolve the issue. On the final day of the session, the Chairman of the Ad Hoc Committee proposed a number of changes to resolve outstanding issues, one of which would be to replace paragraph 2 with the following (see annex):

"2. This Protocol shall not apply to state-to-state transactions or to state transfers in cases where the application of the Protocol would prejudice the right of a State Party to take action in the interest of national security consistent with the Charter of the United Nations."

[30] The bracketed text was originally included in order to exclude from the scope of the Protocol cases where private individuals shipped or transported firearms across borders for non-commercial purposes such as hunting or recreational shooting. These concerns have now been addressed by the adoption of article 11, paragraph 6, which provides for simplified import, export and transit procedures in such cases.

[31] Many delegations present at the informal consultations held during the eighth session of the Ad Hoc Committee expressed concern about the phrase "for purposes of national security". Some argued that it was either redundant vis-à-vis the words "state-to-state transactions" or unacceptable, as authorizing transfers by individuals or non-state organizations undertaken for national security purposes. This discussion continued at the eleventh session of the Ad Hoc Committee, as indicated in footnote 29 above.

[32] At the informal consultations held during the eighth session of the Ad Hoc Committee, the delegation of China indicated that it would have serious difficulties implementing the Protocol without some language in this provision excluding firearms made solely for security or military forces. Other delegations expressed concern about a broad exclusion of such firearms, in particular from the Protocol's marking requirements, because of the problem of diversion of firearms from military or security stockpiles to illicit traffic. Discussion of the question continued at the eleventh session of the Ad Hoc Committee. See the footnotes to article 9 below, the annex to the present document (proposals of the Chairman) and documents A/AC.254/L.266 (proposal of an informal working group) and A/AC.254/L.271 (proposal of the Vice-Chairman), for texts proposed and details of the discussion.

Article 5
Criminalization[33]

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the following conduct, when committed intentionally:

(a) Illicit trafficking in firearms, their parts and components and ammunition;

(b) Illicit manufacturing of firearms, their parts and components and ammunition;

[*Former subparagraph (c) was deleted.*]

[(c) Importing, exporting and manufacturing of any explosive bomb, incendiary bomb, gas bomb, grenade, rocket, rocket launcher, missile system or mine without a licence or authorization from a competent authority of the State Party;][34] and

(d) Falsifying or illicitly obliterating, removing or altering the marking(s) on firearms required by article 9 of this Protocol.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the following conduct:[35]

(a) Subject to the basic concepts of its legal system, attempting to commit or participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence established in accordance with paragraph 1 of this article.

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[33] At the eleventh session of the Ad Hoc Committee, the text of article 5 of the draft Protocol was finalized, with the exception of paragraph 1 (c), which remains open pending a decision about whether to deal with destructive devices in the Protocol.

[34] At the eleventh session of the Ad Hoc Committee, an informal working group established to consider articles 2 and 5 of the draft Protocol recommended the deletion of article 2, subparagraph (b) (ii), and the replacement of article 5, paragraph 1 (c), with a provision requiring States Parties to criminalize importing, exporting or manufacturing portable destructive devices without a licence or authorization (A/AC.254/L.268). The group also proposed that the definition of the term "destructive devices" be left to domestic law, with a note to be included in the *travaux préparatoires* describing such devices. The delegation of the Islamic Republic of Iran proposed to delete all references to destructive devices, while encouraging States Parties to criminalize illicit trafficking in such devices or to apply other provisions of the Protocol to them using other agreements between interested States (A/AC.254/L.273). On the final day of the eleventh session, the Chairman proposed a number of changes to address all of the major issues still unresolved. His proposals included the deletion from the draft Protocol of all references to destructive devices and were still under discussion when the eleventh session was adjourned.

[35] At the eleventh session of the Ad Hoc Committee, paragraph 2 was finalized, on the understanding that two interpretative points would be clarified by the inclusion of the following notes in the *travaux préparatoires*:

"The 'other measures' mentioned here are additional to legislative measures and presuppose the existence of a law."

"References to attempting to commit the offences established under domestic law in accordance with paragraph 2 (a) are understood in some countries to include both acts perpetrated in preparation for a criminal offence and those carried out in an unsuccessful attempt to commit the offence, where those acts are also culpable or punishable under domestic law."

Article 7
Confiscation, seizure and disposal

1. Without prejudice to article 12 of the Convention, States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of firearms, their parts and components and ammunition that have been illicitly manufactured or trafficked.

2. States Parties shall adopt, within their domestic legal systems, such measures as may be necessary to prevent illicitly manufactured and trafficked firearms, parts and components and ammunition from falling into the hands of unauthorized persons by seizing and destroying such firearms, their parts and components and ammunition unless other disposal has been officially authorized, provided that the firearms have been marked and the methods of disposal of those firearms and ammunition have been recorded.

Article 8
Record-keeping

Each State Party shall ensure the maintenance, for not less than ten years, of information in relation to firearms and, where appropriate and feasible, their parts and components and ammunition that is necessary to trace and identify those firearms and, where appropriate and feasible, their parts and components and ammunition which are illicitly manufactured or trafficked and to prevent and detect such activities. Such information shall include:

(a) The appropriate markings required by article 9 of this Protocol;

(b) In cases involving international transactions in firearms, their parts and components and ammunition, the issuance and expiration dates of the appropriate licences or authorizations, the country of export, the country of import, the transit countries, where appropriate, and the final recipient and the description and quantity of the articles.

Article 9
Marking of firearms[36]

1. For the purposes of identifying and tracing firearms, [referred to in article 2, subparagraph (b) (i), of this Protocol,][37] States Parties shall:

(a) Require, at the time of manufacture of each firearm, the appropriate marking of the name of its manufacturer, its place of manufacture and its [serial number];[38]

[(b) Require appropriate markings on each imported firearm[39] [following its importation for the purpose of commercial sale within the importing country, or permanent private importation],[40] permitting the identification of the importer's name and address

[36] At the eleventh session of the Ad Hoc Committee, there were extensive discussions on the marking requirements and in particular on the nature of the markings to be applied and the extent to which the requirements would apply to firearms manufactured exclusively for the military or security forces of the States Parties involved. Recommendations were received from an informal working group (A/AC.254/L.266), the Vice-Chairman (A/AC.254/L.271) and the European Commission (A/AC.254/L.275) (superseding A/AC.254/L.260, European Commission, and A/AC.254/L.264, Canada) during the session. On the final day of the session, further proposals were made by the Chairman of the Ad Hoc Committee (see annex). Most delegations agreed that there should be some form of appropriate unique marking applied to all firearms at the time of manufacture. The issues still under discussion involved the question of whether a different standard would apply to firearms manufactured exclusively for a State Party's military or security forces, the exact format or content of markings to be applied and whether those markings should be able to be read or interpreted by anyone or only by the authorities of the State where the firearm was manufactured.

[37] Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of the Holy See. This provision would limit the mandatory marking requirement to conventional firearms within subparagraph (b) (i) of the definition in article 2, excluding the destructive devices defined as firearms by subparagraph (b) (ii). At the eleventh session of the Ad Hoc Committee, an informal working group recommended the deletion of subparagraph (b) (ii), which would make the bracketed text unnecessary (A/AC.254/L.268). The delegation of the Islamic Republic of Iran proposed to delete all references to destructive devices (A/AC.254/L.273). On the final day of the eleventh session, the Chairman proposed a number of changes to address all of the major issues still unresolved (see annex). His proposals included the deletion of all references to destructive devices from the draft Protocol and were still under discussion when the eleventh session was adjourned.

[38] On the type of information to be contained in the marking at the time of manufacture, the delegation of the United Kingdom proposed to include the year of manufacture and suggested that the meaning of the words "place of manufacture" should be clarified (A/AC.254/5/Add.1 and Corr.1). The delegation of Argentina proposed to include model number in addition to serial number. The delegation of New Zealand proposed to replace the words "serial number" with the words "unique identifier". The delegation of China proposed to delete the words "name of manufacturers". The delegation of Switzerland suggested that the marking requirement should not be overloaded. At the eleventh session of the Ad Hoc Committee, the format and content of markings to be applied were discussed extensively and remained one of the issues still open when the meeting adjourned. A number of proposals were made to describe the markings for all firearms, imported firearms or firearms produced exclusively for a State Party's military or security forces. These included "serial number" (European Commission, A/AC.254/L.260), "serial number or unique numeric code" (Canada, A/AC.254/L.264), "serial number or any other unique alphanumeric code" (delegation of Mexico), "unique numeric or alphanumeric marking" (working group, A/AC.254/L.266, and Vice-Chairman, A/AC.254/L.271), "unique markings permitting ready identification" (Vice-Chairman, A/AC.254/L.271) and "appropriate unique marking" or "appropriate simple marking" (Chairman, see annex).

[39] The delegation of Japan suggested that the period for marking imported firearms should be defined (i.e. the period during which they passed through customs or during which they were legally obtained by the final recipient) (A/AC.254/5/Add.1 and Corr.1).

[40] This addition was proposed by the delegations of Japan and the United Kingdom (A/AC.254/5/Add.1 and Corr.1) and supported by the delegations of Croatia, the Philippines, Portugal, Saudi Arabia and Tunisia. The delegations of the Holy See, New Zealand, Nigeria, Qatar and the Republic of Korea stated their

[and an individual serial number if the firearm does not bear one at the time of import][41] [so that the source of the firearm can be traced];[42, 43] and

(c) [[Require][44] the appropriate marking of any firearm confiscated or forfeited pursuant to article 7 of this Protocol that is retained for official use;][45, 46]

[(d) Require, at the time of transfer of a firearm from government stocks to permanent civilian use, the appropriate marking of the place of transfer and serial number.][47]

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preference for not including this phrase so that marking would be required regardless of the purpose of import.

[41] This addition was proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1). The Holy See proposed the deletion of this phrase.

[42] This addition was proposed by the delegations of Japan and the United Kingdom (A/AC.254/5/Add.1 and Corr.1). The delegation of New Zealand requested clarification of the word "source".

[43] Many delegations supported the idea of requiring additional marking at the time of import, but concerns remained about the costs and practicality of this and about who (importers, exporters or government agencies) would actually do the marking. At the eleventh session of the Ad Hoc Committee, there was further discussion of import marking. Generally, the positions of some delegations that import marking was unnecessary or impracticable were contingent on the establishment of a clear obligation to mark all firearms in a "user-friendly" way at the time of manufacture. This was seen as preferable in order to ensure that any firearms subsequently diverted from state control would previously have been marked. If the Protocol did not require user-friendly marking or did not apply to firearms made exclusively for a State Party's military or security forces at the time of manufacture, many of the delegations that would otherwise regard import marking as unnecessary would then see it as necessary and proposals that would make it more practicable were considered. These included limiting the requirement to firearms imported for commercial sale or permanent private retention and firearms that had not been previously marked (European Commission, A/AC.254/L.260) and limiting the content of import marking and exempting temporary imports completely (informal working group, A/AC.254/L.266, Vice-Chairman, A/AC.254/L.271, and Chairman, see the annex to the present document).

[44] The delegations of the Libyan Arab Jamahiriya, the Netherlands and Saudi Arabia supported the requirement for marking confiscated firearms. The delegation of France was of the opinion that further consideration was needed. The delegation of the Netherlands proposed changing the word "require" to the word "ensure".

[45] At the seventh session of the Ad Hoc Committee, the delegation of Japan proposed adding at the end of this subparagraph the words "except authorized samples".

[46] At the eleventh session of the Ad Hoc Committee, an informal working group set up to recommend changes to article 9 recommended the deletion of this provision (A/AC.254/L.266). Its proposal was incorporated into subsequent proposals, which did not find consensus for other reasons (Vice-Chairman, A/AC.254/L.271, and Chairman, see the annex to the present document).

[47] This text was proposed by the delegation of Norway at the seventh session of the Ad Hoc Committee. At the eleventh session of the Ad Hoc Committee, there was general support for the principle of ensuring that firearms transferred from government stocks to private circulation were marked in such a way as to identify the transferring State Party and the individual firearm involved. The major issue still open, as with other paragraphs of this article, involved the exact format and content of the markings to be applied to such firearms. New proposals for this paragraph appear in documents A/AC.254/L.260 (European Commission), A/AC.254/L.264 (Canada), A/AC 254/L.266 (working group), A/AC.254/L.271 (Vice-Chairman) and the annex to the present document (Chairman).

[1 *bis*. The firearms referred to in article 2, subparagraph (b) (ii), of this Protocol should be marked appropriately at the time of manufacture, if possible.][48]

2. States Parties shall encourage the firearm manufacturing industry to develop measures to guard against the removal[49] of markings.[50, 51]

Article 10
Deactivation of firearms

A State Party that does not recognize a deactivated firearm as a firearm in accordance with its domestic law shall take the necessary measures, including the establishment of specific offences if appropriate, to prevent the illicit reactivation of deactivated firearms, consistent with the following general principles of deactivation:

(a) All essential parts of a deactivated firearm are to be rendered permanently inoperable and incapable of removal, replacement or modification in a manner that would permit the firearm to be reactivated in any way;

(b) Arrangements are to be made for deactivation measures to be verified, where appropriate, by a competent authority to ensure that the modifications made to a firearm render it permanently inoperable;

(c) Verification by a competent authority is to include a certificate or record attesting to the deactivation of the firearm or a clearly visible mark to that effect stamped on the firearm.

[48] This additional paragraph was proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1). This provision would create an optional marking requirement for the destructive devices defined as firearms by subparagraph (b) (ii) of the definition of "firearm" in article 2. At the eleventh session of the Ad Hoc Committee, an informal working group recommended the deletion of subparagraph (b) (ii), which would make this text unnecessary (A/AC.254/L.268). The delegation of the Islamic Republic of Iran proposed to delete all references to destructive devices (A/AC.254/L.273). On the final day of the eleventh session, the Chairman proposed a number of changes to address all of the major issues still unresolved (see annex). His proposals included the deletion of all references to destructive devices from the draft Protocol and were still under discussion when the eleventh session was adjourned.

[49] At the seventh session of the Ad Hoc Committee, the delegation of France suggested that the word "complete" be added before the word "removal". It noted that criminals would adopt technical developments of their own to remove markings and elude tracing.

[50] The delegation of South Africa suggested including the words "developing effective and inexpensive measures to mark firearms" in this paragraph (A/AC.254/5/Add.5). The importance of there being an inexpensive way of marking was mentioned by the delegation of Pakistan. The delegation of Saudi Arabia suggested including a reference to "forged or counterfeited marking", which was supported by the delegation of Colombia.

[51] Other issues discussed in relation to this article included: (a) the need for an international database on firearm manufacturers (suggested by the delegation of Argentina and supported by the delegations of Colombia, Ecuador, Nigeria, Portugal and Ukraine); (b) the need for a universally compatible marking system (suggested by the delegation of the Netherlands and supported by the delegations of Portugal, Switzerland and Ukraine); and (c) the need for marking ammunition (suggested by the delegations of Turkey and Ukraine). While expressing its support for marking, the delegation of China expressed the view that differences in marking methods in each region needed to be taken into account in developing this article.

Article 11
General requirements for export, import and transit licensing or authorization systems

1. Each State Party shall establish or maintain an effective system of export and import licensing or authorization, as well as of measures on international transit, for the transfer of firearms, their parts and components and ammunition.

2. Before issuing export licences or authorizations for shipments of firearms, their parts and components and ammunition, each State Party shall verify:

(a) That the importing States have issued import licences or authorizations; and

(b) That, without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, the transit States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit.

3. The export and import licence or authorization and accompanying documentation together shall contain information that, at a minimum, shall include the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a description and the quantity of the firearms, their parts and components and ammunition and, whenever there is transit, the countries of transit. The information contained in the import licence must be provided in advance to the transit States.

4. The importing State Party shall, upon request, inform the exporting State Party of the receipt of the dispatched shipment of firearms, their parts and components or ammunition.

5. Each State Party shall, within available means, take such measures as may be necessary to ensure that licensing or authorization procedures are secure and that the authenticity of licensing or authorization documents can be verified or validated.

6. States Parties may adopt simplified procedures for the temporary import and export and the transit of firearms, their parts and components and ammunition for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repairs.

Article 12
Security and preventive measures

In an effort to detect, prevent and eliminate the theft, loss or diversion of, as well as the illicit manufacturing of and trafficking in, firearms, their parts and components and ammunition, each State Party shall take appropriate measures:

(a) To require the security of firearms, their parts and components and ammunition at the time of manufacture, import, export and transit through its territory; and

(b) To increase the effectiveness of import, export and transit controls, including, where appropriate, border controls, and of police and customs transborder cooperation.

Article 14
Information

1. Without prejudice to articles 27 and 28 of the Convention, States Parties shall exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant case-specific information on matters such as authorized

producers, dealers, importers, exporters and, whenever possible, carriers of firearms, their parts and components and ammunition.

[*Former paragraph 1 was divided into paragraphs 1 and 2 and the subsequent paragraphs were reorganized and renumbered.*]

2. Without prejudice to articles 27 and 28 of the Convention, States Parties shall exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

(a) Organized criminal groups known to take part or suspected of taking part in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition;

(b) The means of concealment used in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition and ways of detecting them;

(c) Methods and means, points of dispatch and destination and routes customarily used by organized criminal groups engaged in illicit trafficking in firearms, their parts and components and ammunition; and

(d) Legislative experiences and practices and measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

3. States Parties shall provide to or share with each other, as appropriate, relevant scientific and technological information useful to law enforcement authorities in order to enhance each other's abilities to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to prosecute the persons involved in those illicit activities.

4. States Parties shall cooperate in the tracing of firearms, their parts and components and ammunition that may have been illicitly manufactured or trafficked. Such cooperation shall include the provision of prompt responses to requests for assistance in tracing such firearms, their parts and components and ammunition, within available means.

5. Subject to the basic concepts of its legal system or any international agreements, each State Party shall guarantee the confidentiality of and comply with any restrictions on the use of information that it receives from another State Party pursuant to this article, including proprietary information pertaining to commercial transactions, if requested to do so by the State Party providing the information. If such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure.

Article 15
Cooperation

1. States Parties shall cooperate at the bilateral, regional and international levels to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

2. Without prejudice to article 18, paragraph 13, of the Convention, each State Party shall identify a national body or a single point of contact to act as liaison between it and other States Parties on matters relating to this Protocol.[52]

3. States Parties shall seek the support and cooperation of manufacturers, dealers, importers, exporters, brokers and commercial carriers of firearms, their parts and components and ammunition to prevent and detect the illicit activities referred to in paragraph 1 of this article.

Article 18
Training and technical assistance

States Parties shall cooperate with each other and with relevant international organizations, as appropriate, so that States Parties may receive, upon request, the training and technical assistance necessary to enhance their ability to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, including technical, financial and material assistance in those matters identified in articles 29 and 30 of the Convention.

Article 18 bis
Brokers and brokering

1. With a view to preventing and combating illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, States Parties that have not yet done so shall consider establishing a system for regulating the activities of those who engage in brokering. Such a system could include one or more measures such as:

(a) Requiring registration of brokers operating within their territory;

(b) Requiring licensing or authorization of brokering; or

(c) Requiring disclosure on import and export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction.

2. States Parties that have established a system of authorization regarding brokering as set forth in paragraph 1 of this article are encouraged to include information on brokers and brokering in their exchanges of information under article 14 of this Protocol and to retain records regarding brokers and brokering in accordance with article 8 of this Protocol.

Article 19
Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation

[52] The *travaux préparatoires* should indicate that the reference to "matters relating to this Protocol" in this paragraph was included in order to take into account the fact that, for matters relating to the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, some States Parties might find it necessary to establish different authorities than those responsible for dealing with mutual legal assistance matters under article 18 of the Convention.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 20

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from [...] to [...] in [...] and thereafter at United Nations Headquarters in New York until [...].

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

[Article 20 bis

Reservations

1. Reservations shall be subject to the provisions of the Vienna Convention on the Law of Treaties of 1969.[53]

[53] United Nations, *Treaty Series*, vol. 1155, No. 18232.

2. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States Parties at the time of ratification, acceptance, approval or accession.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.][54]

Article 21
Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the [fortieth] instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 22
Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such

[54] Proposal by the delegation of China at the eleventh session of the Ad Hoc Committee. Most delegations opposed the addition of this provision, noting that the Ad Hoc Committee had previously decided not to deal expressly with the question of reservations in the text of the Convention and that that decision had subsequently been adopted by the Committee with respect to the other two protocols. It was noted that if no reference was made to reservations in any of the instruments, the principles established by the Vienna Convention on the Law of Treaties would apply, but that if specific reference was made in this instrument, then interpretation of the other instruments might be affected. The other instruments will also be accompanied by the following note in their respective *travaux préparatoires*:

"While the [Convention/Protocol] has no specific provisions on reservations, it is understood that the Vienna Convention on the Law of Treaties of 1969 applies regarding reservations."

organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 23
Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 24
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

Annex

Revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime: proposals made by the Chairman of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime at its eleventh session[a]

1. Restructuring of the Protocol

1. It is proposed that the Protocol be restructured in line with the other Protocols by regrouping articles 8-12, 14 and 15 into one chapter, to be entitled "Prevention".

2. Article 2: Definitions

Subparagraph (b) (ii)

2. It is proposed that articles 2, subparagraph (b) (ii), 5, paragraph 1 (c), and 9, paragraph 1 *bis* (see footnote a), of the Protocol be deleted.

3. Article 4: Scope

3. It is proposed that article 4 be replaced with the following text:

"*Article 4*
"*Scope*

"1. This Protocol shall apply, except as otherwise stated herein, to the prevention of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to the investigation and prosecution of offences established in article 5 of this Protocol where those offences are transnational in nature and involve an organized criminal group.

"2. This Protocol shall not apply to state-to-state transactions or to state transfers in cases where the application of the Protocol would prejudice the right of a State Party to take action in the interest of national security consistent with the Charter of the United Nations."

[a] On the final day of the eleventh session of the Ad Hoc Committee, the present text was produced by the Chairman of the Ad Hoc Committee with a view to resolving the major issues outstanding in articles 2, 3, 4, 5 and 9 of the draft Protocol. The original text was produced and distributed informally in English only during the discussions. It was subsequently read by the Secretariat in a modified form and a further informal document was produced, with two options for article 9, paragraph 1 (a) *bis*, to illustrate the differences between the two variations. The text of the present annex is based on the latter informal document, with the two options for article 9, paragraph 1 (a) *bis*, retained. The proposed revision of article 9 would include the deletion of subparagraph (c) as well as revision of the other subparagraphs of paragraph 1. To facilitate comparison with the previous text and in-session proposals, the remaining subparagraphs have not been renumbered.

4. Article 9: Marking of firearms

4. It is proposed that article 9 be replaced with the following text:

"*Article 9*
"*Marking of firearms*

"1. For the purpose of identifying and tracing firearms, States Parties shall:

"(a) Require, at the time of manufacture of each firearm, appropriate unique marking providing the name of the manufacturer, the country or place of manufacture and the serial number or any alternative appropriate unique marking permitting ready identification by all States Parties of the country of manufacture and enabling the competent authorities of the latter country to trace the firearm;"

"Option 1

"(a) *bis* Ensure that any firearm not manufactured for the use of a State Party's own army or security forces is marked with appropriate unique markings providing the name of the manufacturer, the country or place of manufacture and the serial number;

"Option 2

"(a) *bis* Ensure that any firearm manufactured for the use of a State Party's own army or security forces is marked in accordance with subparagraph (a) of this article;

"(b) Require appropriate simple marking on each imported firearm, permitting identification of the country of import and, where possible, the year of import and enabling the competent authorities of that country to trace the firearm, and a unique numeric or alphanumeric marking, if the firearm does not bear such a marking;

"(b) *bis* The requirements of subparagraph (b) of this paragraph need not be applied to temporary imports of firearms for verifiable lawful purposes;

"(d) Ensure, at the time of transfer of a firearm from government stocks to permanent civilian use, the appropriate unique marking permitting identification by all States Parties of the transferring country and including a numeric or alphanumeric code.

"2. States Parties shall encourage the firearms manufacturing industry to develop measures against the removal or alteration of markings."